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September 28, 2010

Danielle Gosselin
Section of Environmental Analysis
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423

Re: Draft Environmental Impact Statement, FD 35116

Dear Ms. Gosselin:

We are writing on behalf of People Protecting Communities (“PPC”) to provide comments in response to the Draft Environmental Impact Statement (“EIS”), Docket No. FD 35116, issued July 23, 2010 by the Surface Transportation Board, Section of Environmental Analysis (“SEA”). PPC is a regional coalition of concerned residents and business owners committed to protecting and preserving the health and safety of citizens and preserving the environment for sustainable uses in Pennsylvania. PPC would like to submit the following comments on the EIS:

1. Comment on Section 1.9, Appropriate Analysis of Landfill. The Proposed Action and proposed Resource Recovery LLC (“RRLC”) landfill are connected actions, and a complete analysis of all potential impacts associated with the development and operation of the landfill should be included in the EIS. SEA’s decision to the contrary relies on an inappropriately narrow interpretation of the National Environmental Policy Act (“NEPA”) and ignores the *factual* reality that the railroad and the proposed landfill are functionally and economically interdependent. Without the landfill and industrial park, the proposed project will be the “Railroad to Nowhere,” a boondoggle aimed at generating development entirely inconsistent with state and county plans that are aimed at creating a tourist oriented economy in the Pennsylvania Wilds. Either there is no need whatsoever for this rail line or it is intended to facilitate the development of a landfill and associated facilities that will not occur without the rail line.

SEA relies on *Dep’t of Transp. v. Public Citizens*, 541 U.S. 752 (2004) for its conclusion that the effects of the landfill need not be considered in the environmental review process. *Public Citizen*, however, does not govern the scope of the “alternatives” analysis. It concerns a matter not in dispute here – whether a “major federal action” had occurred sufficient

to require preparation of an environmental impact statement. Thus, *Public Citizen* is inapposite and the appropriate inquiry is the “but for” test employed by the SEA in past proceedings. *See* EIS at 1-16. Under the “but for” test, the landfill and the industrial park should be included in the analysis because neither can proceed without the proposed rail line.

The SEA’s conclusion that the landfill and industrial park can proceed without reactivation of the rail line does not reflect reality of the situation. There is no adequate access to the site of the proposed landfill and industrial park without either the railroad or the new interchange. Access would be through Snow Shoe Township and the uses and transportation are inconsistent with the Snow Shoe Township Zoning Ordinance, as well as both the Township and County Comprehensive Plans. The current access roads are dirt roads and Snow Shoe will not permit modification of the roads to service an inconsistent use. The EIS even concludes that the Local Road System Upgrade alternative would be “the least environmentally preferable alternative” and identifies a number of environmental obstacles that would make it impossible for this alternative to proceed. EIS at 2-21. The landfill proposal was originally premised on obtaining approval from the United States and Pennsylvania Departments of Transportation for the construction of a new exit from Interstate I-80. SEA recognizes that the I-80 interchange is not considered to be a feasible and reasonable alternative. *See* EIS at ES-10. Because authorization for the road access cannot be given due to inconsistent land use, the landfill cannot proceed without rail access. Indeed, the very fact that the EIS considered alternative access routes for the landfill and industrial park is an implicit admission that the actions are interconnected. It is inconsistent with the requirements of NEPA to fail to consider the possibility of alternative sites for the landfill closer to the New Jersey and New York markets that it will service.

This situation, where multiple federal approvals will be required for actions that are interrelated, is the quintessential situation where the actions should be treated as connected, and alternatives to the interrelated actions will need to be considered in conjunction with one another. Indeed, by letter dated November 5, 2005, the United States Fish and Wildlife Service (“USFWS”) recommended to a representative of the RRLLC, the landfill owner, that all phases of the project, landfill, industrial park, rail spur, interchange, landfill expansion be treated as a single and complete project for agency review. *See* Exhibit A. The Department of Transportation, through the Federal Highway Administration (“FHA”) appears to have agreed with that recommendation and to have determined that impacts of the landfill including wetlands impacts and landfill alternatives would be considered in connection with the application for an interstate interchange. By letter dated January 19, 2007, FHA indicated that the Corps would likely be the lead agency in the NEPA process for both the landfill and the interchange. *See* Exhibit B. Thus, it appears that the Department of Transportation determined that the interchange and the landfill should be treated as a connected action. An identical conclusion is warranted with respect to the alternative rail access. SEA has failed to explain why it has now reached a different conclusion. For these reasons the landfill and the railroad are part of a single connected action and should be considered as such in the NEPA process.

2. Comment on Section 4.2, Land Use Impacts. The EIS incorrectly concludes that the Proposed Action is consistent with the long-range land use plans and objectives of Clearfield and Centre Counties. The analysis is flawed from the beginning because SEA refused to conduct any analysis of consistency issues associated with the proposed landfill. SEA reviewed the Comprehensive Plans solely for consistency with the proposed rail project and concluded that because the plans encourage use of rail, the project is consistent. This is both factually wrong and inconsistent with all reasonable standards for reviewing the consistency of transportation projects with comprehensive land use plans. A transportation project that encourages growth where a county land use plan calls for conservation is generally considered inconsistent with the plan. It also underscores the fundamental problem of not including the landfill as a part of the project. If the rail project were serving an *existing* development and moving traffic onto rail, it would be consistent with the land use plans. However, this is not the case. The proposed project will facilitate a project that both the Clearfield and Centre County officials have found to be *inconsistent* with their land use plans. See EIS at 4-17; see also Letter from Centre County Planning Office, July 19, 2005, attached as Exhibit C.

In addition, both the rail line and the landfill/industrial park are inconsistent with the plans of the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, which has designated the area traversed by the proposed railway as part of the Pennsylvania Wilds, where the wild and natural aspects of the environment are intended to promote tourism. The proposed landfill and industrial park are located at the natural gateway to the Pennsylvania Wilds. See <http://www.pawildsresources.org/index.html>. The rail project will remove an important trail that is part of this program and the landfill/industrial park are inconsistent with these state land use plans for the state forests and state parks. SEA has wholly failed to consider consistency with the Commonwealth of Pennsylvania's regional planning for land use and economic development.

Furthermore, the Surface Transportation Board's approval here and certainly any wetlands permit will require a water quality certification under section 401 of the Clean Water Act, 33 U.S.C. § 1341. Section 401 requires any applicant for a federal license or permit to conduct any activity that may result in the discharge of a pollutant into waters of the United States to obtain certification from the state in which the discharge occurs. The Pennsylvania Department of Environmental Protection ("PADEP") has designated its Chapter 105 regulations as providing the standard for granting a section 401 certification. In granting permits, including 401 water quality certification, PADEP must consider comprehensive plans, such as the Centre County Comprehensive Plan – Phase I (2003). See PADEP Document No. 012-0200-001, Policy for Consideration of Local Comprehensive Plans and zoning Ordinances in DEP Review of Authorizations for Facilities and Infrastructure. Here, the inconsistency with the Centre County Plan would necessitate denial of the section 401 water quality certification.

SEA's contrived and superficial analysis of land use plans is arbitrary, capricious and unsupported by evidence in the record.

3. Comment on Section 4.6.2, Impact to Vegetation and Wildlife. The EIS fails to consider the impact of the rail line in fragmenting habitat. The rail line will be a major fragmenting feature with multiple impacts, including impacts on passerine birds, introduction of invasive species and disruption of migration routes. The EIS summarily dismisses any impacts from reactivation of the old rail line because the graded roadbed of the former railroad already serves as an existing linear corridor between adjacent habitat types. SEA assumes, without providing anything to substantiate that assumption, that the impacts of an active rail line will be the same as a graded roadbed. This conclusion appears to be inconsistent with applicable science. The EIS also completely fails to discuss fragmenting in the context of the proposed new connection where there is no existing graded roadbed and the impacts will undoubtedly be more severe. We suggest that this issue be referred to Pennsylvania's Department of Conservation and Natural Resources' Ecosystem Management Advisory Committee, which routinely reviews proposals affecting Pennsylvania's State Forest System and includes Pennsylvania's leading experts in landscape ecology and conservation biology.

4. Comment on Section 4.7.2, Impacts to Wetlands. The EIS recommends the alternative with the greatest impact on wetlands. Under EPA's 404(b)(1) guidelines, 40 C.F.R. Part 230, the applicable regulations of the Army Corps of Engineers, 33 C.F.R. Part 320 and Pennsylvania wetlands regulations, 25 Pa. Code § 105.18a, projects must avoid wetlands before mitigating. Far from avoiding wetlands, SEA proposes the alternative that most disrupts wetlands. Further, the EIS fails to include the wetlands that will be impacted by the landfill and industrial park. *See* Comment on Section 5.2.7, below.

5. Comment on Section 4.8.4, Impacts to Parks and Recreation Facilities. The EIS does not adequately consider the impacts to state parks and recreation. The SEA does not provide an adequate basis for disagreeing with the conclusions of the District Manager of Moshannon State Forest that the proposed rail line would potentially impact the "ambience" of the area and the recreational experience of hikers using the Allegheny Front Trail. The SEA provides no support for its opinion that the impact of two trains a day would be "nominal," especially in these circumstances, where there are no developed recreational facilities within this section of the Moshannon State Forest. The SEA also does not even attempt to explain its nonsensical conclusion that eliminating the Snow Shoe Multi-Use Trail and the noise generated by ATVs and replacing it with railroad tracks and trains will "enhance" the recreational experience of hikers using the Allegheny Front Trail. The trash on the trains and in the landfill will generate odors that will have an adverse impact on recreation. These impacts are significant and cannot be ignored.

6. Comment on Sections 4.4 and 5.4, Air Quality Impacts. The air quality impacts analysis in the EIS fails to include any discussion of increases to greenhouse gas emissions as required by NEPA. *See* 40 C.F.R. §§ 1502.16, 1509.8; *see also* Council on Environmental Quality, Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions, February 2010. While rail transportation is generally considered to reduce greenhouse gas emissions, the proposed project seeks to locate waste

facilities remotely from their sources which would not have the effect of reducing greenhouse gas emissions. If the rail displaced existing truck traffic, there would be a positive impact. However, this rail line is intended to generate development in an entirely new area, remote from the site of waste generation. This will increase greenhouse gas emissions.

7. Comment on Section 5.2.2, Cumulative Impacts to Land Use. The analysis of cumulative impacts to land use in the EIS is cursory, at best, and fails to acknowledge that the reasonably foreseeable landfill-incinerator-industrial park complex will incontrovertibly change the character of the surrounding area. SEA points out that likely cumulative impacts include the “loss of several hundred acres of undeveloped forestland,” among other impacts, but dismisses any long-term effects by claiming that large-scale projects “typically require some form of site restoration as mitigation.” EIS at 5-5. But even SEA recognizes that this mitigation will not revert the land use and land cover back to predevelopment conditions. SEA’s conclusion that there will be no adverse impacts to state forests and parks from a cumulative land use perspective is similarly unsubstantiated. As noted above, state and county land use call for maintenance of these areas as natural open space areas. The EIS fails to identify how the impacts could be mitigated and what mitigating measures there might be.

8. Comment on Section 5.2.7, Cumulative Impacts to Water Resources. The EIS also fails to consider the cumulative wetlands impacts by glossing over the fact that additional wetlands will be taken by the landfill and industrial park. SEA acknowledges that there will be reasonably foreseeable cumulative impacts that quantitatively exceed the wetland and watercourse impacts of the proposed rail line alone, but refuses to provide any legitimate analysis of those impacts claiming that they are “impossible to quantify without exact locations and specific limits of disturbance.” EIS at 5-9. However, state and federal officials have already commented on the proposal for the landfill/industrial park project. For example, in a letter dated February 14, 2007, USFWS commented on RRLLC’s section 404 permit application for the landfill/industrial park project and stated that the project “will permanently affect nearly 11 acres of wetlands...and destroy and fragment valuable wildlife habitat.” See Exhibit D. USFWS also disapproved of RRLLC’s proposed compensatory mitigation and objected to issuance of the permit. Similarly, in a letter dated February 13, 2007, the U.S. Environmental Protection Agency (“EPA”) stated that it is “very concerned that the project as proposed has not demonstrated that impacts to waters of the United States have been avoided or minimized to the greatest extent practicable as required by the Section 404(b)(1) Guidelines.” See Exhibit E. EPA recommended that the permit application be withdrawn. Failure to consider these cumulative effects at the planning stage, in an EIS, is simply inexcusable.

9. Comment on Chapter 7, Short-Term Use Versus Long-Term Productivity of the Environment. The EIS offers no evidence to support the conclusion that economic loss from the Snow Shoe Trail or the Pennsylvania Wilds will be offset by fiscal benefits from the landfill and other industrial operations. PPC conducted an independent analysis of RRLLC’s claimed economic benefits for the landfill that involved a survey of 18 Pennsylvania landfills

with an average daily volume similar to the proposed RRLLC landfill, an examination of 35 host agreements for Pennsylvania landfills, conferring with the Chief Tax Assessor for Centre County and the Centre County Solid Waste Authority to obtain the local waste disposal numbers, and comparing RRLLC's benefit claims with those of the proposed similar-sized landfill (Camp Hope Run) 18 miles west of the RRLLC site. PPC's analysis reveals that RRLLC's claimed waste disposal benefits, real estate tax benefits and new employee salary and local wage tax benefits are exaggerated by three to four times. Regardless of whether RRLLC's or PPC's calculations are used, RRLC's owners and investors will take away five to eight times the income that Rush Township, Snow Shoe Township, the Philipsburg Osceola School District and Centre County combined will receive for assuming 100 percent of the harms of the landfill. Furthermore, SEA cannot claim benefits from the landfill/industrial park to offset the loss of Snow Shoe Trail when SEA refuses to consider the full extent of the impacts and harms from the landfill/industrial park project in its EIS.

Thank you for the opportunity to review and provide comments on the Draft EIS. We hope that the SEA takes these comments into careful consideration in preparing the Final EIS.

Very truly yours,

A handwritten signature in blue ink, appearing to read "RBM", followed by a long horizontal flourish.

Robert B. McKinstry, Jr.
Marlene S. Gomez

RBM/

Enclosures

cc: Honorable John Quigley
Ronald A. Lane, Esquire
Jeffrey D. Lapp, U.S.E.P.A., Region III
Jennifer Kagel, U.S. Fish & Wildlife Service
Michael Dombroskie, U.S. Army Corps of Engineers
Jonathan P. Crum, Federal Highway Commission
Robert P. Jacobs, Director, Centre County Planning and Community Dev. Office
Ms. Nancy Sutley, Chair Council on Environmental Quality
Daniel A. Devlin, Director Bureau of Forestry
Ms. JoAnn Gillette

EXHIBIT A



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pennsylvania Field Office
315 South Allen Street, Suite 322
State College, Pennsylvania 16801-4850

November 5, 2005

FyI.. Jim MHE - WM



Ms. Robin Dingle
Environmental Planning Consultants
Buckingham Green II
4920 York Road, Suite 290
P.O. Box 306
Holicong, PA 18928

Dear Ms. Dingle:

This responds to your letters of December 3, 2004, and March 20, August 29, and September 13, 2005, which provided the Fish and Wildlife Service with information regarding the landfill project proposed by Resource Recovery, LLC (RRLLC), located in Rush Township, Centre County, Pennsylvania. The following comments are provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of federally listed endangered and threatened species, and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) to ensure protection of fish and wildlife resources.

Threatened and Endangered Species

As mentioned in our letter of June 9, 2004 (copy enclosed), the proposed landfill project is located within the range of four federally listed species, the threatened bald eagle (*Haliaeetus leucocephalus*), endangered Indiana bat (*Myotis sodalis*), endangered northeastern bulrush (*Scirpus ancistrochaetus*), and threatened small-whorled pogonia (*Isotria medeoloides*). Surveys for these species, following our recommended survey guidelines, have been conducted on the 500-acre landfill portion of the 6000-acre property.

A field survey for small-whorled pogonia was conducted by David Santillo from July 27 to July 29, 2004. All plant communities considered to be potential habitat were searched; however, no small-whorled pogonia were found.

On March 15, 2005, you conducted an aerial survey for the bald eagle. Suitable nesting and foraging locations, such as stream corridors, open water, and forest interior habitats were searched for individuals and nests. No bald eagles or nests were observed within the 500-acre project area, or within a two-mile buffer around this area.

Mist-net surveys for the Indiana bat were conducted by John Chenger of Bat Conservation and Management, Inc., between June 1 and 6, 2005. Four sites were surveyed using 13 nets for a total of 26 net-nights (minimum recommended level of effort was 16 net-nights). Four species of bats, including northern long-eared (*Myotis septentrionalis*), eastern red (*Lasiurus borealis*), little brown (*Myotis lucifugus*), and big brown (*Eptesicus fuscus*) were captured, totaling 97 individuals; however, no Indiana bats were captured.

Joe Isaac, a botanist qualified to identify northeastern bulrush, conducted field surveys on August 24 and 25, 2005. All 28 delineated wetlands within the landfill portion of the property and potential mitigation areas were surveyed for this species; however, no northeastern bulrush were found.

Based on our review of these four survey reports and their negative results, we conclude that implementation of the proposed 500-acre landfill project will not have a direct adverse effect on the northeastern bulrush, small-whorled pogonia, Indiana bat, or bald eagle. However, if other developments are proposed for this site, surveys should be conducted for the above species within all direct and indirect impact areas, as we previously recommended to you (see enclosed copy of joint comment letter from the Pennsylvania Department Environmental Protection, dated June 14, 2005). For example, we are in receipt of correspondence dated July 1, 2005, from Timothy Falkenstein of Rettew, requesting clearance for impacts to listed species in the area of the proposed Interstate 80 interchange. It is not clear whether surveys for the federally listed species cited above have been conducted in the area to be affected by this interchange. Accordingly, please provide maps and project plans comparing the areas surveyed for each of the above species to the areas that will be affected by all project related features, including the interchange, landfill, and associated facilities. Additional surveys may be necessary if all areas affected by such facilities have not been adequately surveyed.

Other Fish and Wildlife Resources

Since our June 9, 2004, letter, we met with RRLLC and other resource agencies to discuss potential wetland and stream encroachments associated with project construction. We subsequently provided comments to the Pennsylvania Department Environmental Protection, which were also included in their June 14 comment letter. To date, our concerns stated in that letter remain unaddressed. It appears that the RRLLC project will permanently affect nearly 11 acres of wetlands, and will also destroy and fragment valuable wildlife habitat. We offer the following summary of our concerns for your consideration.

Alternatives Analysis. Landfill and industrial park development are not water-dependent activities, and RRLLC has not adequately justified destroying aquatic resources for developing the landfill and related facilities. RRLLC should explore alternatives that are less environmentally damaging, such as alternative site plan configurations that minimize wetland fills and alternative site locations with lower habitat quality. According to the Pennsylvania Department of Environmental Protection, since 1988, the State has authorized only one landfill having impacts to aquatic resources greater than six acres (the Alliance Sanitary Landfill in Lackawanna County; 6.18 acres). Other new landfills and expansions have affected no more than 2.9 acres for any single project (12 landfills affecting a total of 13.69 acres of wetlands).

This can be attributed largely to proper site selection and impact minimization through project reconfiguration.

In early alternatives analyses, RRLLC focused on previously-disturbed lands, in conjunction with highway and rail access, as the main criteria for site consideration. Accordingly, many sites were eliminated or not even considered because of a lack of highway or rail access. Since the resource agency meeting of May 13, 2005, highway access at the Rush Township site via a new interchange has become uncertain due to local highway issues. In fact, in the open letter to the community that appeared in the June 19, 2005, *Centre Daily Times*, RRLLC stated that, should plans for an interchange not be approved, RRLLC "... will be compelled to accept access to the development via the existing roadway network." That said, the previous alternatives analysis that rejected sites due to a lack of highway access cannot be considered valid. RRLLC should conduct a new alternatives analysis, focusing on previously disturbed lands.

Single and Complete Project. The resource agencies have consistently recommended that all aquatic resources within the entire 6000-acre parcel be properly identified and mapped. To date, aquatic resources have only been identified within the direct footprint of the proposed landfill, without any regard to future development plans for the remainder of the parcel. With plans for a future industrial park, rail spur, landfill expansion, and a possible highway interchange, all resources existing on this entire 6000-acre tract should be identified to allow a complete evaluation of site plan configurations that could minimize environmental impacts. For example, we note that RRLLC's June 19 open letter describes the proposed industrial park as being "... integral to the overall development." It appears that the future industrial park would not exist, but for the presence of the proposed landfill. Consistent with the Department and Corps of Engineers regulations, the various development phases of this project should be presented as a single and complete project for agency review.

Summary

The 404(b)(1) guidelines require that discharging fill into waters of the U.S. not be permitted if there are practicable alternatives that would result in less environmental damage. We believe that there are practicable alternatives to filling aquatic resources for landfill and related developments, such as changing the project configuration or alternative siting on degraded (i.e., brownfield or recently surface-mined) properties. If RRLLC is now considering using local roads to access the proposed landfill property, then the alternatives analysis presented at the last meeting no longer applies, and RRLLC must consider other parcels of land that do not have direct highway access. Finally, the full project configuration should be presented for agency review as a single and complete project.

Thank you for the opportunity to comment on this project. Please Jennifer Kagel of my staff at 814-234-4090 if you have any questions or require further assistance regarding this matter.

Sincerely,



David Densmore
Supervisor

Enclosures

cc:

Corps - Pluto
PFBC - Spotts, Urban
EPA - Walsh
PGC - Kost
DEP - Means

ARM Group, Inc
(Attn: Ned Whaler, Bill Tafudo, Amy Gulden)
1129 West Governor Road
Hershey, PA 17033-0797

Rettew
Timothy Falkenstein
3020 Columbia Avenue
Lancaster, PA 17603

Readers file
Project File - Kagel, Dombroskie
ES: PAFO:JKagel/jak:tp:11/9/05
Filename: 2005-0389 landfill

Enclosures include:

- 1) FWS letter dated June 9, 2004
- 2) DEP letter dated June 14, 2005

EXHIBIT B



U. S. DEPARTMENT
OF TRANSPORTATION

Federal Highway
Administration

Penndelaware Division

January 19, 2007

745 Walnut Street, Room 110
Harrisburg, PA 17101-1700

In reply refer to:
HEV-PA.1

Center County, Pennsylvania
Rush Township
CENAB-OP-RPA
Resource Recovery LLC
04-02142-8

Dr. Tom Pluto
U.S. Army Corps of Engineers
State College Field Office
1631 South Atherton, Suite 102
State College, PA 16801

Dear Dr. Pluto:

The Pennsylvania Division of the Federal Highway Administration (FHWA) is in receipt of the Public Notice issued by the U.S. Army Corps of Engineers (USACE), Baltimore District for the referenced proposed undertaking. Upon review of the Notice, the Division office contacted your staff on January 18, 2006 to discuss the status and various aspects of the proposed project.

An Interstate Point of Access (POA) report was prepared for a new interchange location on Interstate 80 and recently transmitted for approval to this office by the Pennsylvania Department of Transportation (PennDOT). That document locates a proposed interchange immediately adjacent to the area described in the USACE Notice. Further, it defines the transportation purpose and need for a new interchange as access for the proposed landfill and other potential future development. Various meetings with state, county and industry representatives regarding this proposed project have further documented the correlation between the proposed interchange and landfill. FHWA final approval of the proposed new interchange will be withheld pending the outcome of the NEPA studies.



**BUCKLE UP
AMERICA**

Per the discussion with your office, it is understood that the USACE will likely serve as the Lead Federal Agency for the undertaking consistent with the CEQ regulations (40 CFR 1500-1508) implementing the National Environmental Policy Act (NEPA). At the appropriate time, we would like to discuss with your agency the project scope and the appropriate Federal agency roles in order to ensure that the NEPA study serves the needs of our respective actions. Please contact either David Cough at 717-221-3411 or Deborah Suciu Smith at 717-221-3785 to establish a time to meet or conference.

Sincerely yours,

/s/ David W. Cough

James A. Cheathan
Division Administrator

cc: Kevin Kline, P.E., PennDOT District 2-0
Karen Michael, P.E., PennDOT District 2-0
Daryl Kerns, P.E., PennDOT HQAD
Brian Hare, P.E., PennDOT HQAD
Kim Bartoo, PennDOT District 2-0

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EXHIBIT C



PLANNING OFFICE

BOARD OF COMMISSIONERS
C. CHRIS EXARCHOS, *Chairman*
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DIRECTOR
ROBERT B. JACOBS

ASSISTANT DIRECTOR
CHRISTOPHER M. PRICE

TO: Centre County Planning Commission

FROM: Robert B. Jacobs, AICP, Planning Director

SUBJECT: Consistency Review with Local, Regional, and County Land Use and Transportation Plans for the Rush Township Point of Access Study

DATE: July 19, 2005

Background and Status

Rush Township, at the direction of the Federal Highway Administration (FHWA), is requesting Centre County to complete a consistency review for the proposed landfill/ industrial park/ interstate access interchange with local, regional and County plans. This request must be completed prior to the FHWA's acceptance of a Point of Access Study (POA), which is required when an application is made to construct an access interchange to the US Interstate system.

The specific access interchange request is from Interstate 80 in Rush Township, Centre County approximately 7 miles west of the existing Exit 147 (Snow Shoe) Interchange. Rush Township, in partnership with Resource Recovery LLC, is proposing a landfill and industrial park on land north of Interstate 80. Secondary access for the access interchange would be provided from Gorton Road, which is a Snow Shoe Township facility (T325), which begins in the Village of Moshannon at the intersection of State Routes 144 and 53 and follows in a southerly direction approximately four (4) miles to the Rush Township municipal boundary.

Gorton Road (through Snow Shoe Township) is the only means of public access to the area of Rush Township where the landfill is proposed. The section of Gorton Road that extends into Rush Township (Peale Road, T325) has not been maintained and has been proposed for abandonment by Rush Township. Currently, State Route 504 is the nearest public roadway in Rush Township to the proposed landfill and at its closest point is approximately four (4) miles south of Interstate 80.

The Centre County Planning Office received a letter from Rush Township on June 10, 2005 requesting a consistency review with the Centre County Comprehensive Plan. The following review will consider local, regional, and county land use planning in accordance with Federal Highway Administration requirements. The requirements in part state:

Policy – It is in the national interest to maintain the Interstate System to provide the highest level of service in terms of safety and mobility. Adequate control of access is critical to providing such service. Therefore, new or revised access points to the existing Interstate System should meet the following requirements:

5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/ or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.

This review will also be in accordance with the Pennsylvania Municipalities Planning Code (PA MPC), Act 247, as amended; the Centre County Comprehensive Plan, the Centre County Comprehensive Plan Consistency and Compatibility Analysis, the Centre County Long Range Transportation Plan, the Snow Shoe Township Comprehensive Plan, and the Snow Shoe Township Zoning Ordinance. Although not part of this review, Clearfield County has an adopted Comprehensive Plan that should be considered in any future planning activities by Rush Township.

In May of 2004, Rush Township approved and signed a host agreement with Resource Recovery LLC for a proposed landfill on lands located north of Interstate 80. This property is also within and adjacent to Snow Shoe Township to the northeast and is adjacent to Clearfield County to the northwest (Moshannon Creek is the boundary between Centre County and Clearfield County). The 5,761.5 acre property, owned by CLOG of Lancaster PA, is located in the two (2) municipalities, Rush Township (2,691.7 acres) and Snow Shoe Township (3,069.8 acres).

Resource Recovery LLC approached Snow Shoe Township in April of 2004 with the landfill proposal. This proposal included a host agreement and a request to rezone the portion of CLOG property within the Township. Following municipal review and discussion by Snow Shoe Township, including a presentation by Resource Recovery LLC in June of 2005, Resource Recovery LLC (citing municipal and citizen opposition) withdrew the rezoning request. The Snow Shoe Township Supervisors subsequently denied the request at an advertised and regularly scheduled public meeting in July of 2004 as a way of procedurally closing out the public hearing/ review and comment process.

With the Rush Township host agreement still in effect, Resource Recovery LLC modified its proposal in September 2004 and limited the proposed landfill activity to the portion of CLOG property in Rush Township.

Rush Township, on behalf of Resource Recovery LLC, submitted a Point of Access Study (POA) for an access interchange to the proposed landfill from Interstate 80 in September 2004 to the PennDOT Central Office in Harrisburg. This study is currently under review by PennDOT and Federal Highway Administration. Based on the POA submittal and the Federal regulations cited above, the Centre County Planning Office and the Centre County Metropolitan Planning Organization (staffed by members of the Centre Regional Planning Agency and the Centre County Planning Office) are responsible for developing this review. Prior to submittal of this review to the Federal Highway Administration, comment and approval will be required by the Centre County Commissioners, Centre County Planning Commission, and the Centre County Metropolitan Planning Organization as outlined in the June 14, 2004 Briefing Paper (see attachment).

Local, Regional, and County Planning

Adopted comprehensive plans and land use controls (such as zoning and subdivision/land development ordinances) vary across the 36 municipalities in Centre County. For planning purposes, Centre County is divided into seven (7) regional planning areas. These planning regions coincide with geographic and socioeconomic factors, municipal boundaries, and to the degree possible, school district boundaries. There are two (2) planning regions specific to this proposal, Moshannon Valley and Mountaintop.

Rush Township

Rush Township along with Philipsburg Borough and South Philipsburg Borough are located within the Moshannon Valley Planning Region. Currently, Rush Township has no adopted comprehensive plan nor do they have an adopted zoning ordinance (although Rush Township has indicated in their June 10, 2005 correspondence that they are in the process of preparing a comprehensive plan).

Of the three (3) municipalities in the Moshannon Valley Planning Region, Philipsburg Borough is the only municipality with a comprehensive plan and zoning ordinance. The Centre County Planning Office provides subdivision / land development review services to all three (3) of the Moshannon Valley municipalities.

In addition to Rush Township not having any adopted land uses controls such as zoning, they further abdicated any local land use rights now and into the future within the area of the proposed landfill (all Rush Township land north of Interstate 80). Contained within the signed host agreement between Rush Township and Resource Recovery LLC is a clause entitled *Obligations of the Township*, which in part states:

"Township agrees that in consideration of this agreement and payment received under the Agreement, Township will not interfere with or oppose the permitting, re-permitting, or permit modifications (to the extent that such permit modifications are not inconsistent with this Agreement) of the Landfill, or pass any ordinances or regulations regulating or interfering with the operation of the Landfill".

Unlike zoning where the local municipality has all of the authority to amend zoning ordinances under the PA MPC, Rush Township is tied to its host agreement and thus limited to any modifications or future land use controls at the proposed site, unless Resource Recovery LLC agrees.

Snow Shoe Township

The Mountaintop Planning Region is also comprised of three (3) municipalities, Snow Shoe Township, Snow Shoe Borough, and Burnside Township. Snow Shoe Township and Snow Shoe Borough both have adopted comprehensive plans and zoning ordinances. Burnside Township does not have either.

Snow Shoe Township adopted their comprehensive plan in 1991 which provided goals, objectives, and an inventory of existing conditions which was then followed by a set of recommendations for future land use. These components became the foundation for the zoning ordinance, adopted in 1998. The zoning districts of that ordinance are based on the recommendations from that adopted comprehensive plan.

More specifically related to the landfill proposal, Snow Shoe Township included this area within the Forest/ Open Space Zoning District. This purpose of the district is as follows:

"This district recognizes the value of conserving land as a natural resource, and the problems which can be created as a result of over-utilization or development of certain areas with unusual or fragile characteristics. Certain lands within the Township have unique characteristics with regard to matters such as potential soil erosion and water supply contamination. Other lands within the Township present the possibility of preserving the aesthetic values and rural character of the Township, preserving wild areas, wetlands, forests, and other natural environments beneficial to wildlife. Within this district, development is either largely uneconomical due to the condition of the land, or undesirable due to the fragile nature of the area, or the need to preserve areas in a natural state"

During the initial stage of the landfill proposal by Resource Recovery LLC, a rezoning request from the Forest/ Open Space District to Industrial (or a similar "by right" zoning district) was submitted to Snow Shoe Township. As stated earlier in this review, the request was withdrawn by Resource Recovery LLC.

Regional Planning

In regards to multi-municipal planning efforts made possible through amendments to the PA MPC, neither planning region, Moshannon Valley and Mountaintop have entered into multi-municipal regional comprehensive plans or zoning ordinances.

County Planning

In 2003, Centre County adopted the Centre County Comprehensive Plan, Phase I. This plan includes background studies and inventories of existing conditions along with the goals, objectives, and recommendations that serve as the foundation for Phase II, Growth Management and Community Development Strategies (currently in development). As with any comprehensive plan, the guidance provided for the development of the County plan came from the PA MPC.

Pennsylvania Municipalities Planning Code, Act 247 Guidance

The PA MPC details the rights and responsibilities of municipalities and counties regarding the preparation, adoption, implementation, and interpretation of planning and land use ordinances, regulations, policies, and procedures. Of particular note to this consistency review is the MPC's *Article III – Comprehensive Plan*. The following review identifies relevant MPC requirements that assist in the determination of consistency.

One of the key elements of this consistency review involves the responsibilities of adjacent municipalities and the County regarding land use planning near municipal boundaries. Section 301.(a)(5) notes that municipal and county comprehensive plans shall include

“a statement indicating that the existing and proposed development of the municipality is consistent with the existing and proposed development and plans in contiguous portions of neighboring municipalities or a statement indicating measures which have been taken to provide buffers or other transitional devices between disparate uses”.

In addition, the same section notes that municipal plans shall provide:

“a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan”.

Further, Section 301.4 notes that:

“municipal comprehensive plans which are adopted shall be generally consistent with the adopted county comprehensive plan”.

Finally, Section 306(1) notes that

“when a municipality having a comprehensive plan is located in a county which has adopted a comprehensive plan, both the county and the municipality shall each give the plan of the other consideration in order that the objectives of each plan can be protected to the greatest extent possible.”

Centre County Consistency and Compatibility Analysis

The following analysis outlines the planning activities that were performed by the County Planning Office pursuant to the MPC sections identified above that are directly related to this consistency review. During the preparation of the County's Comprehensive Plan, the Planning Office prepared the *Centre County Comprehensive Plan Consistency and Compatibility Analysis, March 22, 2001* and its purpose was to identify:

- 1) municipal comprehensive plan consistency with the county comprehensive plan,
- 2) inconsistencies between municipal comprehensive plans, municipal zoning ordinances, and the Centre County existing land use map, and
- 3) existing and future development incompatibilities in contiguous portions of neighboring municipalities.

This document has provided guidance to development of the County Comprehensive Plan and various municipal and regional comprehensive plans developed throughout the County. This document identified no inconsistencies or incompatibilities between existing and future development between Rush and neighboring Snow Shoe Township.

As stated earlier in this review, only Snow Shoe Township has land use controls. Snow Shoe Township has both an adopted Comprehensive Plan and an adopted zoning ordinance. Pursuant to the MPC, the Planning Office must consider Snow Shoe Townships adopted Comprehensive Plan when making this consistency determination. As previously noted, the Snow Shoe Township Comprehensive Plan and zoning ordinance designates the area as Forest/Open Space. This matches the existing land use designations in the adjacent area located in Rush Township.

Developments of Regional Significance

The MPC also notes that special planning review and consideration should be given to large-scale developments that may have impacts on municipalities outside of the jurisdiction within which the proposed development is to be located. To ensure that developments of regional significance and impact are adequately planned for, Section 301(a)(7)(ii) of the MPC requires that County Comprehensive Plans:

"identify current and proposed land uses which have a regional impact and significance, such as large shopping centers, major industrial parks, mines and related activities, office parks, storage facilities, large residential developments, regional entertainment and recreation complexes, hospitals, airports, and port facilities".

The proposed landfill and industrial park clearly falls within this category, particularly given its proximity to Snow Shoe Township, and as such deserves additional planning review to ensure that adequate protections are in place for all impacted municipalities.

The MPC provides the tools to plan for such activities and, in fact, encourages land use planning and infrastructure planning activities be coordinated to maximize resources and minimize development impacts. Section 301.7.d. notes that

“the municipal, multi-municipal or county comprehensive plan may identify where growth and development will occur so that a full range of public infrastructure services, including sewer, water, highways, police and fire protection, public schools, parks, open space and other services can be adequately planned and provided as needed to accommodate growth.”

Consistency with the Centre County Comprehensive Plan

The Centre County Comprehensive Plan, Phase I, provides specific goals, objectives and recommendations that provide guidance for coordinated growth management throughout the County. The following analysis provides an overview of specific findings in the plan that relate to the proposed land use in Rush Township.

Through this review, there are elements of the Centre County Comprehensive Plan goals, objectives, and recommendations that appear to be consistent with the proposed land use and access interchange. For example, the Forest Chapter notes that illegal dumping is an environmental threat and states that:

“garbage that should have been recycled or dumped in a landfill poses many threats to our public and private lands.”

In addition, the Groundwater Section recommends the encouragement of:

“proper handling and disposal of all wastes to prevent groundwater pollution”.

It should be noted that existing locations in Rush Township and neighboring municipalities have been the target of environmental programs for remediation. The siting of a landfill may ameliorate some existing and potential problems associated with illegal dumping and the associated environmental impacts.

The Community Facilities and Services: Energy and Communications Section also provides some guidance to this consistency review. One recommendation encourages:

“public awareness and citizen participation regarding the placement of utility lines or energy production sites”.

In so much as the proposed land use potentially includes an energy production facility or facilities, this consistency review may help to raise public awareness and increase citizen participation regarding the siting and operation of such a facility. In addition, the Comprehensive Plan recommends support for:

“policies to identify and implement alternative fuels as a viable energy alternative”

(although the plan does encourage such planning to occur on a regional basis).

The primary purpose of this review is to examine the proposal in its entirety, including the development of an interstate access interchange to accommodate the considerable traffic to be generated by the proposed use. It should also be noted that the Economic Development Chapter identifies capital facilities planning as a chief component of sound land use / economic development planning and states that:

“access to high-quality comprehensive transportation networks is one component to business location decisions”.

The Plan further notes that the identification of available sites located near such networks, served by supporting infrastructure (e.g. water and sewer service), and situated away from conflicting land uses is an important function of local economic development activities. While the present proposal may maximize the region's transportation infrastructure, it does not meet the other key element of that statement; i.e. the location of such development away from conflicting land uses, which is at the center of the present discussion. The proposed landfill/ industrial park/ interstate access interchange is not a compatible land use given the nature and scale of the development adjacent to Snow Shoe Township. Most importantly, the secondary impacts from the proposed use will create traffic impacts due the fact that all local access to the site is from Snow Shoe Township through the Village of Moshannon.

Further, the proposed use appears to be inconsistent with several elements of the County Comprehensive Plan. To assist in the review and consideration, some of the relevant plan goals, objectives, and recommendations are outlined below and are arranged by three broad themes: growth management, environmental protection, and community and economic development taken primarily from the Natural Resources, Community Facilities and Services, and Economic Development Chapters.

Growth Management

Forest Objectives:

- Protect watershed features such as surface and underground water supplies, stream, floodplains, forested riparian areas, wetlands, fish and wildlife habitats, and aquifer recharge areas
- Use identified natural resource areas and public open spaces to provide guidance with land development activities
- Develop strategies that provide for growth while maintaining a balance with the County's natural resources: forest lands, ag lands, sensitive environmental areas, steep slopes, floodplains, scenic views, and high quality surface and ground waters.

Forest Recommendations:

- Protect forested land in Centre County from development pressures and degradation by guiding land development activities in forested areas.

- Encourage through incentives the protection, preservation, and management of forest resources for their economic and environmental benefits.
- Support protection and wise land use management of mountain ridges to protect sensitive features, i.e., groundwater recharge areas, wildlife habitats, and scenic vistas.

Sewer Service/ Systems Objectives

- Encourage the efficient use of utilities and services such as water, sewer, electric, gas, and telecommunications in existing and planned growth areas.

Sewer Service/ Systems Recommendation

- In cooperation with the municipalities and respective planning regions, identify future growth areas consistent with County and local plans, land use regulations, and with the efficient use of existing and proposed sewer service areas.

Transportation Goal

- To provide a multi-modal transportation system, which includes air, bicycle, highway, pedestrian, public transportation, and rail facilities to maximize the efficient, safe, economical and convenient movement of people and goods while minimizing the adverse impact the system will have on natural and cultural resources, as well as people.

These goals, objectives, and recommendations set the stage for Phase II of the County Comprehensive Plan, Growth Management and Community Development Strategies. The Planning Office began the Phase II process this May by introducing a growth boundary depicting appropriate areas for future growth and development based on existing and planned infrastructure. In the coming months, the Planning Commission will have the opportunity to review and comment on detailed information for Phase II of the County Plan as developed by the Planning staff.

Environmental Protection

Natural Resources Goal:

- Identify, preserve, and monitor Centre County's environmental natural resources for the benefit of present and future generations.

Forest Objectives:

- Promote the wise use and management of the County's natural resources that include prime agricultural lands, forested areas, and mineral resources.

Flood Plains and Wetlands Recommendations:

- Protect wetlands within Centre County from alteration and degradation by guiding land development activities to upland areas.

- Promote vegetative buffers around inland wetlands especially Exceptional Value wetlands.
- Protect the hydrology of wetland areas.

The environmental protection section of the Plan provides these guidelines and suggests further investigation for proposed development activities. This section also compliments the Snow Shoe Township Comprehensive Plan and the adopted zoning ordinance that implements the recommendations of both plans.

Community and Economic Development

Energy and Communications Recommendations:

- Promote public awareness and citizen participation regarding the placement of utility lines or energy production sites.

Surface Water Objectives:

- Promote and preserve the County's natural areas for scenic, educational, historic, environmental, recreational, and tourism purposes

Surface Water Recommendations:

- Make the protection of water resources a priority through regulations for any major land development activity including highway development.
- Integrate local land use planning and watershed planning
- Support the conservation of forested mountain slopes

Economic Development Recommendations:

- Understanding that growth in one sector of the economy impacts other sectors (positively and negatively), potential secondary economic impacts should be identified when making economic development policy decisions.
- The County's historic and cultural resources should be inventoried and promoted as part of a coordinated economic development/tourism strategy.
- Unique cultural and historic resources should be cataloged and promoted as part of a comprehensive County economic development strategy
- Municipalities should identify locally important resources for inclusion in such a plan and should identify related retail opportunities.

- Land use regulations should recognize the relationships between tourism activities and retail opportunities and promote such opportunities (e.g. bed and breakfasts, historic preservation districts, etc.) consistent with sound planning practices.
- The County's recreational amenities should be inventoried with related retail opportunities identified.
- Linkages between recreational opportunities (e.g. trail interconnections, greenways) should be identified and promoted.

The text of the Plan also provides some additional guidance regarding the importance of our forested areas for economic development. For example, the Lumber Heritage Region of which the County is a member, seeks to link forests, parks, historic resources, and communities to allow residents and visitors to explore our vibrant culture and contribute to a vital economy. Other programs (e.g. Pennsylvania Wilds Program) seek to maximize the region's rural character for tourism and economic development purposes.

The Economic Development Chapter recommends continued pursuit of Heritage Tourism opportunities to identify, catalog, and market the unique historic, cultural, and recreational opportunities of the County and its municipalities. In addition, the Plan recognizes the growing trend in nature tourism and the many economic opportunities afforded to our municipalities through outdoor activities including hunting, fishing, camping, hiking, etc. Such activities are a key component of the County's economic development plan and are a vital component to the Mountaintop Region's economy and quality of life.

The development of a landfill/ industrial park/ interstate access interchange in this location would likely have a negative impact on this region's ability to market itself to outdoor tourism. The proposal also includes the reactivation of a rail line that would cut-off an existing rail-trail project designed to provide connectivity to this region for outdoor enthusiasts.

The effects of deterioration to the Mountaintop Region's economy would be particularly severe. In fact, the majority of the Region's growth during the 1990's was due to growth in seasonal housing development. While the applicant has proposed both a landfill and industrial park, which would add to the region's employment opportunities, public disclosure of the number of employees proposed at the site vary. A total of 35 employees were cited in a recent permit application filed by Resource Recovery LLC to the PA Department of Environmental Protection. In a recent public advertising campaign in local newspapers, again by Resource Recovery LLC, a total of 750 employees was cited. This inconsistency alone makes it difficult to evaluate the economic impacts relative to economic and quality of life costs.

In Rush Township, the Mid-State Airport facility located near the Black Moshannon State Park has been identified as an important component of the regional economy. Given its importance, the Planning Office recommends that the Mid-State Airport Authority investigate any potential impacts to their long range development plans.

RECOMMENDATIONS

The Centre County Planning Commission has an obligation under the MPC to ensure compatibility in land use planning between adjacent municipalities. With Snow Shoe Township's existing planning and land use controls, in addition to the numerous inconsistencies with the goals, objectives, and recommendations of the Centre County Comprehensive Plan, the Planning Office recommends that the Planning Commission find the proposed landfill/ industrial park/ Interstate access interchange proposal inconsistent with the Plan.

Land use and transportation are inextricably linked, and it cannot be more apparent than with this proposal. Regardless of the final determinations of this review, a second set of recommendations will be prepared by the MPO staff for review by the MPO Coordinating Committee. These recommendations will focus on local and regional traffic/ transportation system impacts. However, the Planning Office maintains a deep concern about the ability of the applicant to mitigate traffic impacts in Snow Shoe Township.

This recommendation should not be interpreted that the Centre County Planning Office prefers the use of the local road network as has been asserted by Rush Township and Resource Recovery. The present issue placed before the Planning Commission by Rush Township at the direction of the Federal Highways Administration is a matter of Comprehensive Plan review for land use consistency, not approval/ disapproval on the proposed access interchange. If the proposed land use were to be forwarded to the permit application review process and approved at the State and Federal levels, the Planning Office recommends that the only acceptable access would be from Interstate 80.

In addition to a request for consistency review with the existing County Comprehensive Plan, Rush Township has also requested that the Plan be amended to include the proposed development. As has been previously noted, Rush Township is in the process of preparing a municipal Comprehensive Plan. It should be stated that given the considerable impacts likely to be experienced by Snow Shoe Township, it may be difficult for Rush Township to demonstrate an ability to mitigate potential impacts through the development of a municipal Comprehensive Plan alone.

Therefore, if Snow Shoe Township elects to maintain their existing land use controls as they exist today and the Centre County Planning Commission elects to ensure consistency of the landfill proposal with the County Comprehensive Plan, the Planning Office recommends the following steps that could be taken by Rush Township and Resource Recovery to plan for and mitigate potential negative impacts:

- Rush Township – prepare and adopt a Comprehensive Plan (consistent with the County Comprehensive Plan) that plans for appropriate infrastructure to serve the intended use and provides adequate transitional devices, as required by the MPC, to protect the residents of Snow Shoe Township.
- Rush Township – prepare and adopt local land use controls (e.g. zoning ordinance) to implement the adopted Comprehensive Plan.
- Rush Township – advance the proposed interchange as a locally sponsored and privately funded project through the MPO's Long Range Transportation Plan process. This process ensures that both the Technical Advisory Committee and the Coordinating Committee can review all potential area-wide impacts (including impacts to the existing interstate system) and make an appropriate determination that identifies and mitigates potential impacts
- Resource Recovery – execute a host municipality agreement with Snow Shoe Township and/or Centre County identifying potential impacts and detailing a plan to mitigate those impacts. This host agreement will also be recorded with any subsequent subdivision and/or land development plans.

The preparation of these comprehensive and coordinated land use controls and agreements involving both Rush Township and Resource Recovery with input from Snow Shoe Township and Centre County (as required by the MPC) appear necessary to provide the protections that an individual municipality alone cannot. For example, Rush Township has previously attempted to identify and mitigate some of the potential impacts associated with this development proposal; including the development of an interstate access interchange to minimize traffic impacts on Snow Shoe Township.

In fact, one of the conditions identified in the host agreement between Rush Township and Resource Recovery is the construction of an access interchange from Interstate-80. Further, the initial Point of Access Study submitted by Rush Township to PennDOT bolstered Rush Township's assertion that significant negative traffic impacts could be experienced by neighboring Snow Shoe Township if the local road system were to be utilized. The POA study clearly demonstrates an understanding by both Rush Township and Resource Recovery that the local road network is incapable of handling the anticipated traffic and was not planned, intended, or designed to accommodate the anticipated traffic or the required improvements (e.g. condemnations).

Recently however, Rush Township and Resource Recovery have expressed an interest in amending the host agreement to allow for the use of the local road network to serve the proposed development, to the detriment of Snow Shoe Township. In addition, they have requested PennDOT to evaluate a potential Highway Occupancy Permit (HOP) for access to the proposed landfill from the existing State Route system in Snow Shoe Township. This is counter to the current agreements in place and cause for concern in regards to Snow Shoe Township.

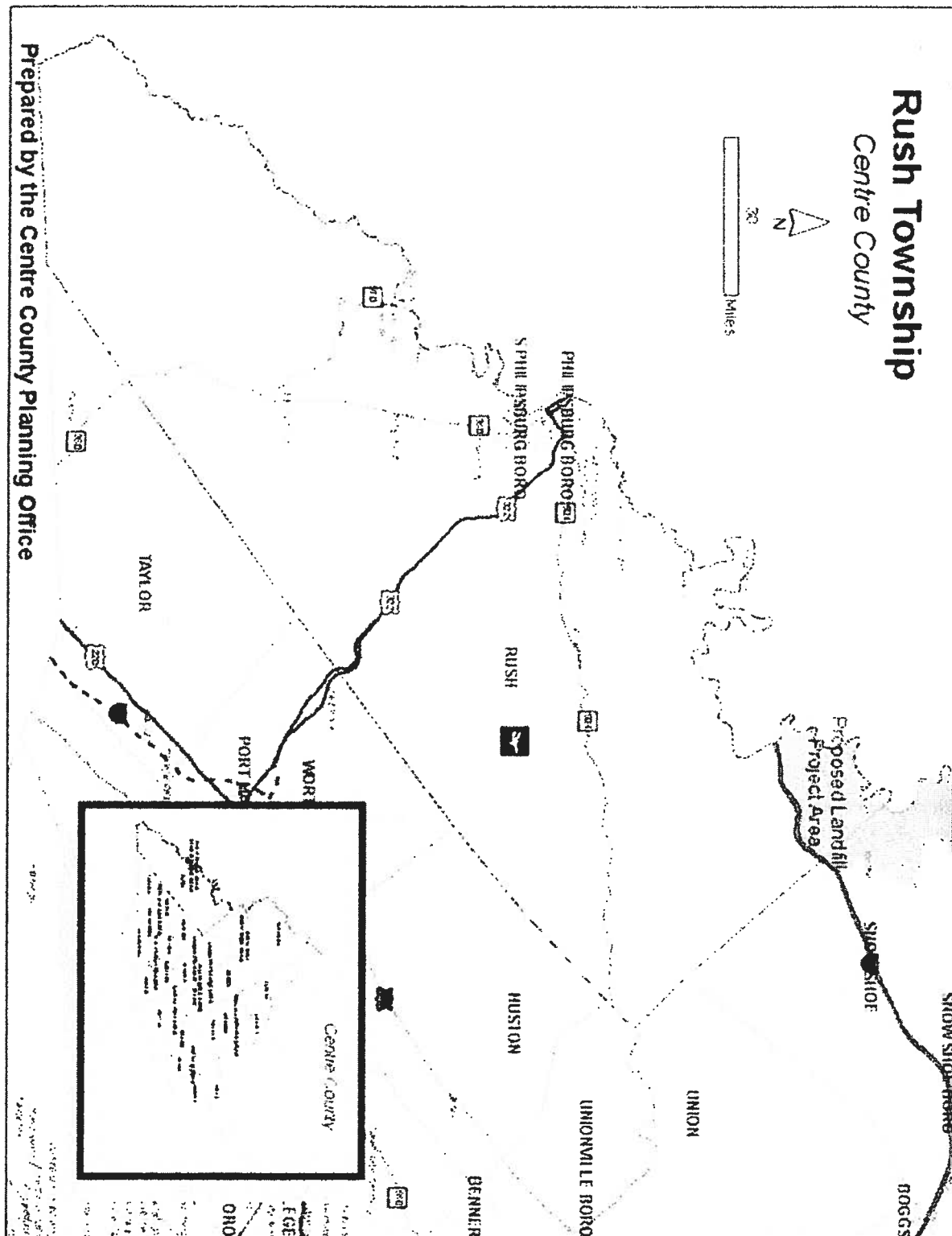
The adoption of local land use controls by Rush Township to implement the Comprehensive Plan should serve to provide for some of the transitional devices required by the MPC. The execution of a host agreement with Snow Show Township and/or Centre County to be recorded with all subsequent plans will serve to ensure that said protections are maintained.

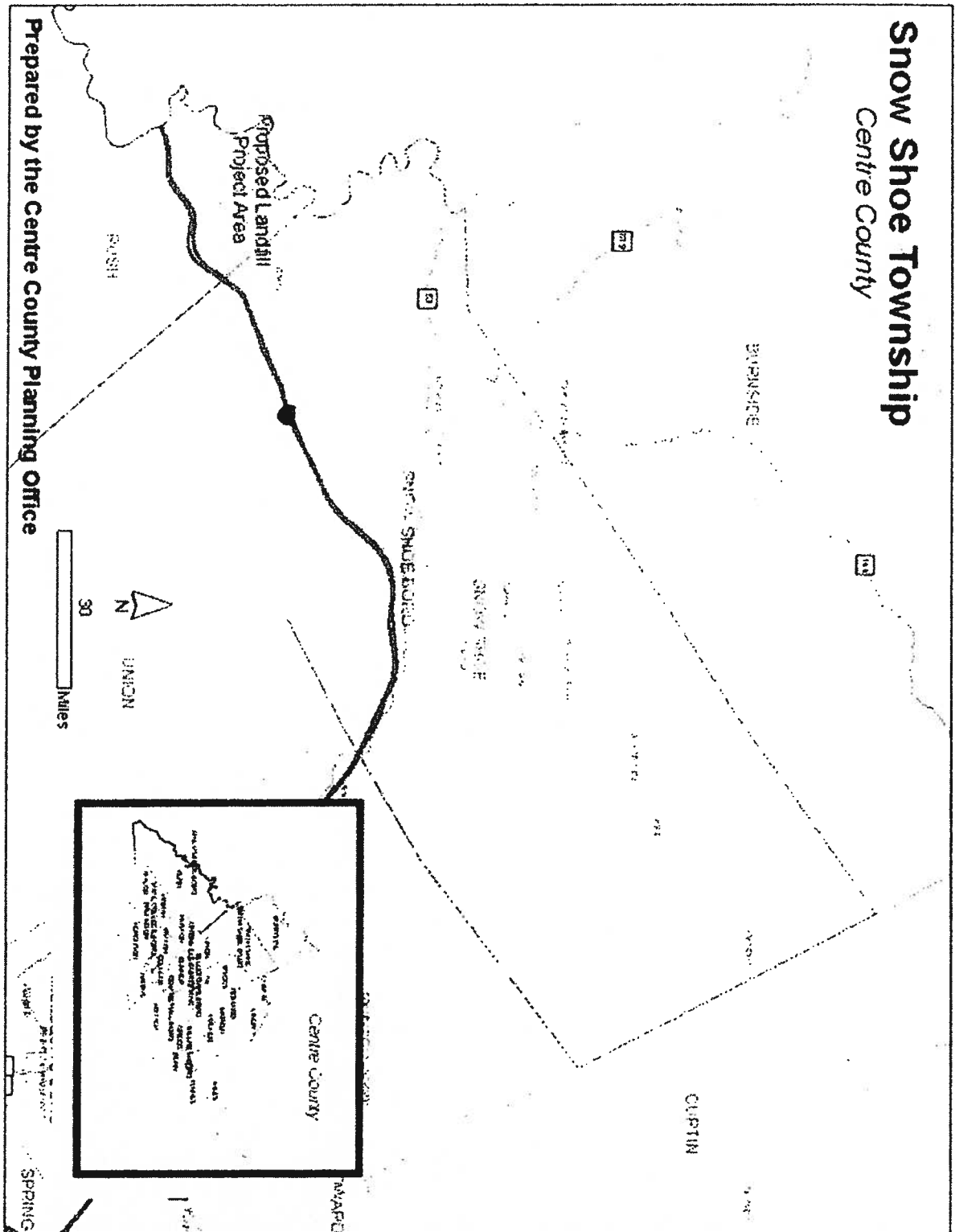
Ultimately, it will be the determination of the Centre County Planning Commission and Board of Commissioners to decide consistency of this proposal with the Comprehensive Plan now and in the future.

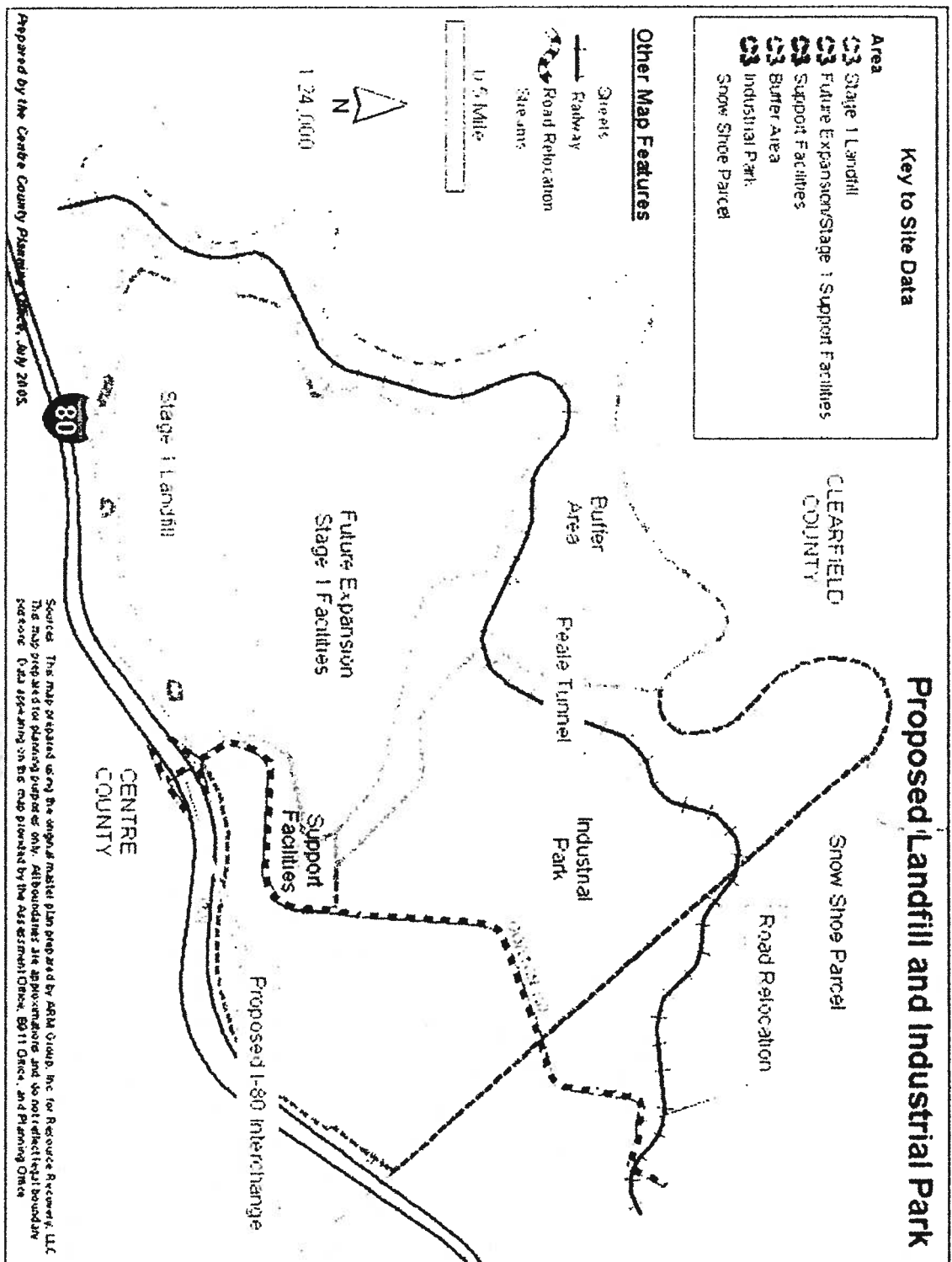
map enclosures

pc: Centre County Board of Commissioners
Timothy T. Boyde, Centre County Director of Administrative Services
Christopher M. Price, AICP, Assistant Planning Director
Robert A. Crum, Director, Centre Regional Planning Agency
Thomas P. Zilla, AICP, Centre County MPO Transportation Planner
Mike Bloom, Centre County MPO Transportation Planner

rbj/ cmp









Proposed Landfill and Industrial Park

National Wetlands Inventory and Natural Heritage Inventory

Total Wetland Acres: 5.48
Rush Township: 0.62 Acres
Snow Shoe Township: 4.86 Acres

Total Natural Acres: 1836.5
Rush Township: 334.39 Acres
Snow Shoe Township: 1502.16 Acres

Legend

-  National Wetland Inventory
-  Natural Heritage Inventory

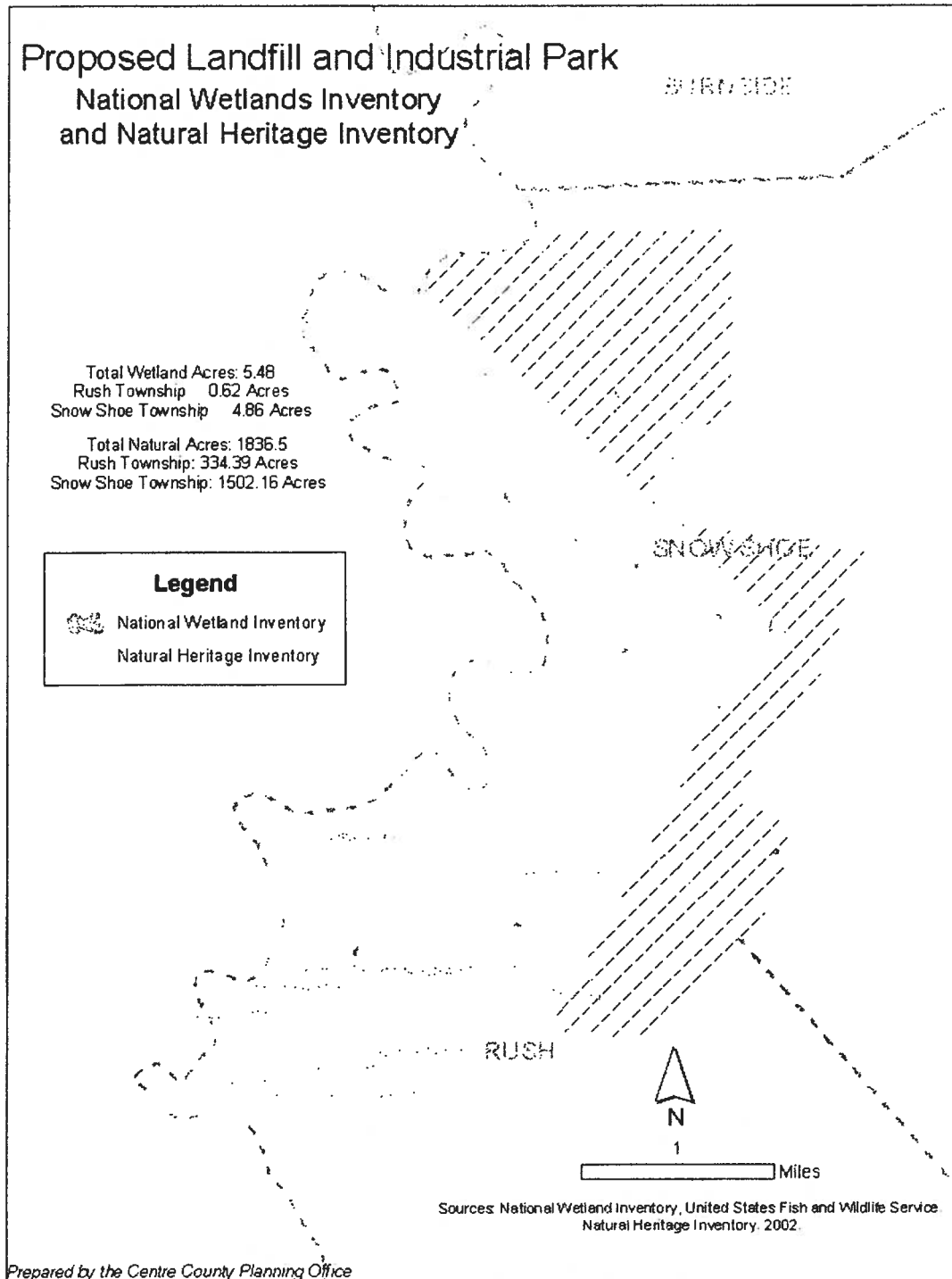


EXHIBIT D



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pennsylvania Field Office
315 South Allen Street, Suite 322
State College, Pennsylvania 16801-4850



February 14, 2007

Colonel Peter W. Mueller, District Engineer
(ATTN: Tom Pluto)
U.S. Army Corps of Engineers
Baltimore District
P.O. Box 1715
Baltimore, MD 21203-1715

Dear Colonel Mueller:

The Fish and Wildlife Service has reviewed Public Notice Number CENAB-OP-RPA-04-02142-8 (PN 07-06), dated January 16, 2007. Resource Recovery, LLC (RRLC), proposes to construct a municipal waste landfill and supporting facilities in Rush Township, Centre County, Pennsylvania. The project would result in impacts to 3.64 acres of federally regulated (jurisdictional) wetlands and 7.01 acres of isolated wetlands (non-jurisdictional pursuant to section 404 of the Clean Water Act). Jurisdictional wetland impacts include fill in 2.89 acres of palustrine forested/palustrine emergent (PFO/PEM) wetlands, 0.69 acre of palustrine scrub-shrub/palustrine emergent (PSS/PEM) wetland, and 0.06 acre of palustrine emergent (PEM) wetland. Additional wetlands may be affected by a proposed highway interchange. As compensatory mitigation, the applicant has proposed creating about 12 acres of wetlands on-site (a 1.1:1 replacement ratio) to offset all wetland impacts (both jurisdictional and non-jurisdictional), 440 linear feet of riparian plantings, and 5.8 acres of upland habitat enhancements.

These comments are prepared in accordance with the requirements of the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e) and the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). They are to be used in your determination of Section 404(b)(1) Guidelines compliance (40 CFR 230) and in your public interest review (33 CFR 320.4) as they relate to protection of fish and wildlife resources. We have previously commented on this project in letters dated October 23, 2006 (to the Pennsylvania Department of Environmental Protection); November 5, 2005 (to the applicant's consultant); June 14, 2005 (joint letter with the Department); and June 9, 2004 (to the applicant's consultant) (copies enclosed). Aside from complying with the procedural requirements of the Endangered Species Act for the landfill site, the applicant has not modified the project to address any of our previous comments, so we are incorporating those comments herein by reference.

We offer the following summary of our previously-stated concerns:

- **Wildlife Habitat Values.** The RRLLC project will permanently affect nearly 11 acres of wetlands (jurisdictional and non-jurisdictional), and destroy and fragment valuable wildlife habitat. Despite past logging and strip mining impacts, the 6,000-acre property supports diverse forest habitat (including mature and early successional red maple, aspen, birch, white oak, pin oak, ash, dogwood, and pine) and a well-developed understory (including northern spicebush, blueberry, greenbriar, fire cherry, sweet fern, and sumac), and is capable of supporting a diverse assemblage of wildlife.
- **Threatened and Endangered Species.** Surveys for four federally listed species (bald eagle, Indiana bat, northeastern bulrush, and small-whorled pogonia) have been conducted on the 533-acre landfill portion of the 6,000-acre property, and we have concluded that the footprint of the proposed landfill will not adversely affect federally listed endangered and threatened species. However, we have further recommended that the applicant conduct surveys for these species within all direct and indirect impact areas for the entire 6,000-acre parcel. To our knowledge, this has not been done.
- **Alternatives Analysis.** We have repeatedly requested that RRLLC explore alternatives that are less environmentally damaging (e.g., alternative site plan configurations, alternative site locations with lower habitat quality and existing highway access, and day-lighting and lining former deep mines for landfill pit construction). In addition, RRLLC has focused on lands with highway and rail access, eliminating from further consideration those sites which lacked transportation access. More recently, however, RRLLC has indicated that local roads are acceptable for landfill access. Therefore, the previous alternatives analysis that rejected sites without highway access is no longer valid. To date, RRLLC has not responded to our request for a new alternatives analysis, nor have they attempted to minimize project impacts on-site (project impacts have not changed since the initial pre-application meeting).
- **Single and Complete Project.** We have consistently recommended that all aquatic resources within the entire 6,000-acre parcel be properly identified and mapped. To date, aquatic areas have only been identified within the footprint (533 acres) of the proposed landfill, without regard to likely future plans for developing the remainder of the parcel (e.g., the industrial park, rail spur, landfill expansion, Gorton Road expansion, and a possible highway interchange). RRLLC has not combined these project-related components into a single and complete project proposal for agency review.
- **Compensatory Mitigation.** Proposed compensatory mitigation sites are unlikely to succeed as such because of unsuitable soils, questionable hydrology, and floodplain siting (making them vulnerable to erosion and deposition from overbank flooding); or they would cause additional, unacceptable loss of valuable forest habitat. The applicant has not responded to our recommendations to investigate alternative sites that are likely to achieve long-term success in replacing the wetland functions lost at the proposed development site. Furthermore, our October 23, 2006, letter recommends that wetland replacement ratios correspond to the affected wetland type (e.g., PFO – 2:1, PSS – 1.5:1, or PEM – 1:1). To date, these recommended replacement ratios have not been incorporated into the project plans.

Finally, based on a recent site visit, we note that a stream exists in what would become landfill cells 5 and 6. This stream was not previously documented, and should be properly delineated and included as a project impact. Should the Corps decide to authorize this project, additional compensatory mitigation for impacts on this stream should be required.

Summary

The 404(b)(1) guidelines require that discharging fill into waters of the United States not be permitted if there are practicable alternatives that would result in less environmental damage. Again, we believe that there are practicable alternatives to filling aquatic areas for the landfill and related developments, such as changing the project configuration, alternative siting on degraded (*i.e.*, brownfield or recently surface-mined) properties, or daylighting deep-mined areas to use for the landfill pit. If RRLLC is now considering using local roads to access the proposed landfill property, then the original alternatives analysis no longer applies, and RRLLC must consider other parcels of land that do not have direct highway access. In addition, all project-related actions should be presented as parts of a single and complete project.

The proposed wetland mitigation sites sacrifice forest cover for the construction of PEM wetlands, may be subject to sedimentation and erosion, and rely on uncertain hydrology. Therefore, we recommend that the applicant explore alternative areas to site their compensatory wetland mitigation work, and do so at appropriate replacement ratios. We ask further than any impacts to streams also be compensated in-kind.

Until these deficiencies are resolved, the project should not be authorized as proposed, and we continue to object to permit issuance.

Thank you for the opportunity to comment on the proposed project. Please Jennifer Kagel of my staff at 814-234-4090 if you have any questions or require further assistance regarding this matter.

Sincerely,



David Densmore
Supervisor

Enclosures

cc:

DEP – Steven Means
PFBC – David Spotts, Chris Urban
EPA – Marria O'Malley-Walsh
PGC – Jeff Kost
Centre County Conservation District

Mr. Rich Adams
Water Management Program
PA Department of Environmental Protection
Northcentral Regional Office
208 W. Third Street
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ARM Group, Inc
(Attn: Ned Whaler, Bill Tafudo, Amy Gulden)
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Rettew
Timothy Falkenstein
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Representative Mike Hanna
State Representative, 76th District
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Centre County Commissioners
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Bellefonte PA 16823-1488

People Protecting Communities
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Clarence, PA 16829

Ms. Michele L. Barbin
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Snowshoe, PA 16874-0142

Ms. Terri Burbidge
221 Gorton Road
Moshannon, PA 16859

Readers file
Project File – Kagel
ES files, archive – Dombroskie
ES: PAFO:JKagel/jak:1/23/07
Filename: Y:\FROFFICE\Drafts\Drafts 2007\snow shoe landfill Corps IP IL.doc

Enclosures include:

- 1) FWS letter dated June 9, 2004
- 2) DEP letter dated June 14, 2005
- 3) FWS letter dated November 5, 2005
- 4) FWS letter dated October 23, 2006

EXHIBIT E



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

February 13, 2007

Mr. Irwin Garskoff
Chief, Pennsylvania Section
U. S. Army Corp of Engineers
Baltimore District
1631 South Atherton
State College, PA 16801

re: CENAB-OP-RPA (Resource Recovery, LLC) 04-02142-8

Dear Mr. Garskoff,

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced permit application in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The applicant, Resource Recovery, LLC, proposes work in wetlands adjacent to unnamed tributaries to Moshannon Creek and Laurel Run in Rush Township, Centre County, PA.

The applicant proposes to discharge dredge or fill material into approximately 3.64 acres of Federally regulated jurisdictional wetlands associated with the construction of a municipal landfill and supporting facilities. The jurisdictional wetlands to be impacted include 2.89 acres of palustrine forested/palustrine emergent (PFO/PEM) wetlands, 0.69 acre of palustrine scrub-shrub/palustrine emergent (PSS/PEM) wetlands, and 0.06 acre of PEM wetlands. An additional 7.01 acres of isolated, non-jurisdictional wetlands are proposed to be impacted. The construction of approximately 12.0 acres PFO wetlands on-site is proposed as mitigation. Additional on-site mitigation proposed includes 440 linear feet of riparian planting and 5.8 acres of upland habitat enhancement.

Information from a U.S. Fish and Wildlife Service field visit on February 7, 2007 indicates the previously mined site is primarily second growth forest with mature hardwoods. An on-site stream having a boulder-gravel substrate was shown to support aquatic life. The existing stream channel is flanked by riparian wetlands. The site would be expected to support a variety of wildlife and migratory birds. The project as proposed would result in the loss of stream channel and associated riparian habitat and permanently impact a total of 10.65 acres of wetlands including 3.64 acres of jurisdictional wetlands. EPA is concerned that the project as proposed would result in the irretrievable loss of valuable habitat that supports a variety of aquatic species, wildlife and migratory birds.

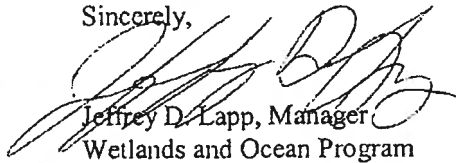
EPA is very concerned that the project as proposed has not demonstrated that impacts to waters of the U. S. have been avoided or minimized to the greatest extent practicable as required by the

Section 404(b)(1) Guidelines. An alternatives analysis that examine both off-site and on-site alternatives that meets the requirements of the Guidelines needs to be performed.. The alternatives analysis should include the primary, secondary, and cumulative impacts that could be expected to occur from construction of such a facility. It appears that impacts from the current proposal are considered only for the footprint of the landfill. Impacts that can be expected to occur from accessing the site, potential expansion of the facility and construction of other associated facilities, i.e. an industrial park, must be considered. In sum the alternatives analysis must consider the project as one single and complete project.

We are also concerned that the referenced permit application does not include specific information on the location and type of wetlands to be constructed as compensatory mitigation. A site specific detailed drawing of the location, type, and extent of all proposed mitigation measures must be furnished.

We recommend that the permit application for the proposed project be withdrawn. Additional information must be provided for informed decision making. Thank for the opportunity to review and comment. You can contact Marria O'Malley Walsh at (570) 628-9685 when additional information becomes available for this project.

Sincerely,



Jeffrey D. Lapp, Manager
Wetlands and Ocean Program

cc: Cindy Tibit, USFWS, State College, PA